



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Christopher M. Goff (27839)  
ARMSTRONG TEASDALE LLP  
ONE METROPOLITAN SQUARE  
SUITE 2600  
ST. LOUIS MO 63102

**COPY MAILED**

**MAY 15 2009**

**OFFICE OF PETITIONS**

In re Application of	:	
Krzysik et al.	:	
Application No. 10/659,967	:	LETTER REGARDING PTA
Filed: September 11, 2003	:	
Attorney Docket No.	:	
19834 (27839-1294)	:	

This letter is in response to the "LETTER REGARDING ERROR IN PATENT TERM ADJUSTMENT", filed on November 8, 2008. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. § 154(b) be reviewed for accuracy insomuch as the patent term adjustment should be reduced by 1 days from 669 days to 668 days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED in part**. The determination of PTA at the time of the mailing of the Notice of Allowance is six hundred forty-one (641) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is 641 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 23, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 669 days.

Applicants filed the instant "LETTER REGARDING ERROR IN PATENT TERM ADJUSTMENT" on November 8, 2008.

On November 14, 2008, the issue and publication fees were paid. Accordingly, the subject letter was timely filed in accordance with 37 CFR 1.705(b).

The Office determined a patent term adjustment of 669 days based on an adjustment for PTO delay of 686 days, reduced by applicant delay of 17 days.

Applicants state that the period of patent term adjustment of 463 days for the mailing, in accordance with 37 CFR 1.703(e), of a final decision of the Board of Patent Appeals and Interferences on June 16, 2008, 463 days after March 12, 2007, the date on which a notice of appeal was filed is incorrect, as the period of patent term adjustment should be 462 days rather than 463 days.

Applicants are incorrect as 37 CFR 1.702(e) states that the period of adjustment under § 1.702(e) is the sum of the number of days, if any, in the period beginning on the date on which, as opposed to the day after the date, a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

On March 12, 2007, a notice of appeal was filed. On June 16, 2008, a final decision in favor of the applicant was mailed, 463 days after the date on which the notice of appeal was filed. Accordingly, entry of a period of 463 days of examination delay is warranted.

On February 21, 2006, a request for continued examination (RCE) was filed. On March 21, 2006, 28 days after the date the RCE was filed, a supplemental information disclosure statement (IDS) was filed.

37 CFR 1.704(c)(8) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the

following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

The IDS filed on March 21, 2006, did not include a statement in accordance with 37 CFR 1.704(d). Further, the IDS was not expressly requested by the examiner within the meaning of 37 CFR 1.704(c)(8).

Accordingly, the IDS filed on March 21, 2006 is considered a failure to engage in reasonable efforts to conclude processing or examination of an application. Entry of a period of reduction of 28 days of patent term adjustment is therefore warranted.

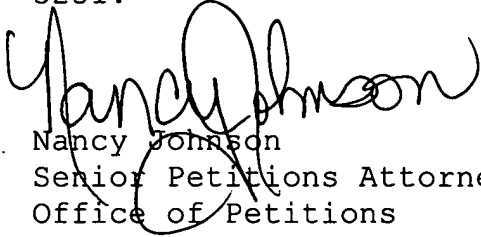
In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **six hundred forty-one (641) days** (686 days of PTO delay, reduced by 45 (17+28) days of Applicant delay).

As the instant letter was submitted to advise the Office of an error in Applicant's favor, the \$200.00 application fee under 37 CFR 1.705(b) was not required, and has not been charged.

The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Wednesday

**PALM INTRANET**

Date: 5/13/2009

Time: 20:43:42

**PTA Calculations for Application: 10/659967**

Application Filing Date:	09/11/2003	PTO Delay (PTO):	686
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	17
Post-Issue Petitions:	0	Total PTA (days):	641
PTO Delay Adjustment:	-28		

**File Contents History**

Number	Date	Contents Description	PTO	APPL	START
123	05/13/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		28	
112	09/23/2008	MAIL NOTICE OF ALLOWANCE			
111	09/18/2008	ISSUE REVISION COMPLETED			
110	09/18/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
109	09/15/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
108	09/15/2008	DOCUMENT VERIFICATION			
107	09/15/2008	NOTICE OF ALLOWABILITY			
106	08/05/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
104	10/31/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
101	10/31/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
100	08/19/2008	DATE FORWARDED TO EXAMINER			
99	08/12/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
98	08/19/2008	DATE FORWARDED TO EXAMINER			
97	08/12/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
96	08/19/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
95	08/12/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
94	06/17/2008	ELECTRONIC REVIEW			
93	06/16/2008	EMAIL NOTIFICATION			
92	06/16/2008	MAIL BPAI DECISION ON APPEAL - AFFIRMED IN PART	463		58

91	06/12/2008	BPAI DECISION - EXAMINER AFFIRMED IN PART			
90	05/16/2008	EMAIL NOTIFICATION			
89	05/16/2008	DOCKETING NOTICE MAILED TO APPELLANT			
88	05/14/2008	ASSIGNMENT OF APPEAL NUMBER			
87	04/23/2008	APPEAL AWAITING BPAI DOCKETING			
86	03/07/2008	EMAIL NOTIFICATION			
85	03/07/2008	MAIL REPLY BRIEF NOTED BY EXAMINER			
84	02/27/2008	REPLY BRIEF NOTED BY EXAMINER			
83	01/08/2008	CASE DOCKETED TO EXAMINER IN GAU			
82	01/07/2008	DATE FORWARDED TO EXAMINER			
81	12/27/2007	REPLY BRIEF FILED			
80	01/07/2008	EMAIL NOTIFICATION			
79	01/07/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
78	12/29/2007	APPEAL READY FOR BPAI DOCKETING			
77	12/26/2007	CORRESPONDENCE ADDRESS CHANGE			
76	12/05/2007	EMAIL NOTIFICATION			
75	12/04/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
74	11/21/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
73	11/14/2007	RETURN OF UNDOCKETED APPEAL TO THE TC			
72	11/14/2007	EXAM. ANS. REVIEW COMPLETE			
71	11/06/2007	ELECTRONIC REVIEW			
70	11/03/2007	EMAIL NOTIFICATION			
69	11/02/2007	MAIL EXAMINER'S ANSWER			
68	10/29/2007	EXAMINER'S ANSWER TO APPEAL BRIEF			
67	08/15/2007	APPEAL BRIEF REVIEW COMPLETE			
66	08/15/2007	DATE FORWARDED TO EXAMINER			
65	07/13/2007	APPEAL BRIEF FILED			
64	06/19/2007	ELECTRONIC REVIEW			
63	06/16/2007	EMAIL NOTIFICATION			
62	06/14/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
61	06/09/2007	APPEAL BRIEF REVIEW COMPLETE			
60	06/09/2007	DATE FORWARDED TO EXAMINER			
59.1	05/10/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
59	05/10/2007	APPEAL BRIEF FILED			

58	03/12/2007	NOTICE OF APPEAL FILED		12	50
57	03/12/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
56	03/07/2007	ELECTRONIC REVIEW			
55	03/06/2007	EMAIL NOTIFICATION			
54	03/02/2007	MAIL ADVISORY ACTION (PTOL - 303)			
53	02/27/2007	ADVISORY ACTION (PTOL-303)			
52	02/16/2007	DATE FORWARDED TO EXAMINER			
51	01/30/2007	AMENDMENT AFTER FINAL REJECTION			
50	11/30/2006	MAIL FINAL REJECTION (PTOL - 326)	12		46
49	11/27/2006	FINAL REJECTION			
48	09/20/2006	CASE DOCKETED TO EXAMINER IN GAU			
47	07/21/2006	DATE FORWARDED TO EXAMINER			
46	07/18/2006	RESPONSE AFTER NON-FINAL ACTION			
45	04/24/2006	MAIL NON-FINAL REJECTION			
44	04/21/2006	NON-FINAL REJECTION			
43	03/21/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
42	03/21/2006	REFERENCE CAPTURE ON IDS			
41.7	03/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
41	03/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
40	02/24/2006	DATE FORWARDED TO EXAMINER			
39	02/21/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
38	02/24/2006	DATE FORWARDED TO EXAMINER			
37	02/21/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		5	35
36	02/24/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
35	11/16/2005	MAIL FINAL REJECTION (PTOL - 326)			
34	11/14/2005	FINAL REJECTION			
33	09/20/2005	DATE FORWARDED TO EXAMINER			
32	09/07/2005	RESPONSE AFTER NON-FINAL ACTION			
31	06/10/2005	MAIL NON-FINAL REJECTION	211		-1
30	06/08/2005	NON-FINAL REJECTION			
29	03/21/2005	PRELIMINARY AMENDMENT			
28	03/08/2005	REFERENCE CAPTURE ON IDS			

27.7	03/08/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	03/08/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	02/07/2005	REFERENCE CAPTURE ON IDS			
25.7	02/07/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	02/07/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	12/20/2004	MISCELLANEOUS INCOMING LETTER			
23.7	01/03/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	01/03/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	09/20/2004	REFERENCE CAPTURE ON IDS			
21.7	09/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	09/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	10/07/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
19	10/07/2004	CASE DOCKETED TO EXAMINER IN GAU			
18	10/31/2003	REFERENCE CAPTURE ON IDS			
17.7	10/31/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	10/31/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	07/12/2004	REFERENCE CAPTURE ON IDS			
15.7	07/12/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	07/12/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	06/17/2004	APPLICATION RETURN FROM OIPE			
13	06/17/2004	APPLICATION RETURN TO OIPE			
12	06/17/2004	APPLICATION RETURN FROM OIPE			
11	06/17/2004	APPLICATION IS NOW COMPLETE			
10	06/17/2004	APPLICATION RETURN TO OIPE			
9	06/15/2004	APPLICATION DISPATCHED FROM OIPE			
8	06/15/2004	APPLICATION IS NOW COMPLETE			
7	05/24/2004	ADDITIONAL APPLICATION FILING FEES			
		A STATEMENT BY ONE OR MORE INVENTORS			



6	05/24/2004	SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	04/28/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	11/24/2003	CLEARED BY OIPE CSR			
2	10/16/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/11/2003	INITIAL EXAM TEAM NN			

Search Another: Application#

Search

#### EXPLANATION OF PTA CALCULATION

#### EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | Home page